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FOCUS ON THE PROBLEM

SCENE 1, TAKE 1: It's time for your meeting with Jack. You're fed up with his attitude. He's constantly late for work, takes excessively long breaks despite your instructions not to, and argues with you about the most minor things. Today you are going to read him the "riot act" and let him know you mean business. As you walk to the meeting room, you get angrier and angrier. You can almost feel your blood pressure rising. If it wasn't for this jerk, your life would be a lot easier.

Whoa! Whoa! Whoa! Take a breath, turn around, go back to your office and start again. You are not ready for this meeting.

SCENE 1, TAKE 2: It's time for your meeting with Jack. You're as prepared as possible. You have thoroughly documented the issues you want to discuss with him, following the guidelines discussed in the February, June and September 2003 *Employee Relations Bulletins*. You have also reviewed the Discussion Model found on page 3 of the June 2003 *Bulletin*. You are ready. You are feeling good. There's a certain bounce in your step as you walk to the meeting room.

Okay, unless you had something in your desk drawer that is specifically prohibited by Federal regulation, you probably don't have a bounce in your step, and "feeling good" may be a bit of a stretch. But you are prepared for the meeting, and have so far managed to keep your feelings under control.

As the first scene described above indicates, one of the pitfalls that supervisors often encounter when discussing problems with employees is the inability to control their feelings, particularly feelings of anger. This is normal. After all, the employee is making your life miserable. But anger rarely solves a problem, and that is what you need to do. One of the ways to control your anger and the other feelings that may interfere with your problem-solving efforts is to **"focus on the problem, not the employee."** Many of you have probably heard of this rule. But there are few situations where the rule is more important than when dealing with problem employee situations. Here are some reasons why it is so important in these kinds of situations:

- Focusing on the employee will inevitably result in a predictable reaction – **the employee will become defensive**. Rather than listening to you, the employee will be focusing on his or her defense or, even worse, interrupting you to give his/her side of the story. Once employees drop their shields to defend against a perceived attack, meaningful conversation and problem-solving ceases.

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Focus on the Problem (Continued)

- It is **easier to solve a problem than change a person**. People come to work with various backgrounds and personalities. How they deal with situations has been honed over a period of many years, and it is unlikely that you will be able to do much to change this fact, at least in the short run. Recall the case of Ima Gouch in the **March 2004 Bulletin**. It is much simpler, and productive, to work on the problem that needs to be fixed than to change the employee. If, for example, the employee is constantly late for work or does not return from breaks in a timely manner, this problem can be identified and resolved without necessarily changing what is perhaps the employee's natural inclination to be less than consistent about time issues. The employee needs to understand that work is work, and that in the workplace, a more structured approach to time is both necessary and required.
- There is a **greater chance of examining the problem objectively**. When we focus on the person rather than the problem, it is more likely that our subjective feelings will interfere with our ability to isolate the problem and find an effective way to solve it. Focusing on the employee can become a distraction that interferes with meaningful discussion and problem-solving.

Here are a few ways to keep the focus on the problem:

- Have **concrete documentation**. This forces the parties to focus on facts, rather than feelings.
- Let the employee know that he/she will be **given an opportunity to speak**. This technique is helpful since it lessens the employee's inclination to become defensive. As mentioned in a previous Bulletin, establishing a discussion ground rule that everyone will have an opportunity to talk, without interruption, is a good way to deal with this issue.
- Use **"I statements."** These statements are particularly useful when the primary objective of the meeting is problem-solving. An "I statement or message" is characterized by a non-judgmental description of the behavior (no accusations), a description of its consequences, and why you are concerned as the employee's supervisor. For example, you might say, "I notice that there is a problem with (describe the problem). As a consequence of this problem (describe what happened or could have happened). I am concerned about this situation (because)."

Not every conversation is the same, of course, and on some occasions you will need to be more forceful than on others. Keeping your focus on the problem, however, will always serve you well, regardless of the problem.

seven lessons of life

- ❖ You can't trust dogs to watch your food.
- ❖ Laughing is good exercise. It's like jogging on the inside.
- ❖ Growing old is mandatory; growing up is optional.
- ❖ Borrow from pessimists – they don't expect it back.
- ❖ If everything is going well, you have obviously overlooked something.
- ❖ Hard work pays off for the future; laziness pays off now.
- ❖ Raising teenagers is like nailing Jell-O to a tree.

The Douglas Factors

Have you ever asked yourself, “What are the *Douglas* factors and why do I have to consider them when taking disciplinary action?” or “Who is this Douglas guy anyway?” Here’s your answer...

Curtis Douglas was a Supply Clerk at the Veterans Administration (VA). The VA removed Mr. Douglas for being absent without leave for 30 minutes; for being away from his assigned duty station without permission; and for selling his employment services to a coworker. He had received \$5.00 from a disabled coworker for helping him stock shelves. Following his removal, Mr. Douglas filed an appeal with the Merit Systems Protection Board, or the Board, claiming the penalty of removal was too severe.

The Board decided the penalty of removal was appropriate and provided an explanation in their decision, *Curtis Douglas, et al. v. Veterans Administration, et al.*, AT075299006, April 10, 1981, more commonly referred to as “*Douglas v. V.A.*” This decision provided agencies with 12 factors to consider when determining the reasonableness of a disciplinary action or penalty. These 12 factors are commonly referred to as “The *Douglas* Factors.”

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee’s past disciplinary record;
4. The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisor’s confidence in the employee’s ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee’s rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternate sanctions to deter such conduct in the future by the employee or others.

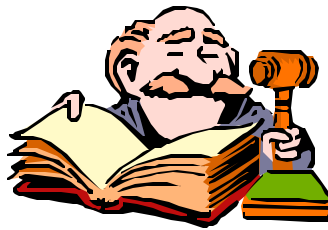
All 12 *Douglas* factors do not have to be considered in every case. The agency must consider the relevant factors on a case by case basis. Some of the factors, such as long term service with the Federal government, no prior record of disciplinary actions, an outstanding performance record, and genuine remorse which shows good potential for rehabilitation, will weigh in the employee’s favor. Other factors which may enhance the penalty include, the seriousness of the offense, the fact that an employee holds a position of trust, an employee’s past disciplinary record, a supervisor’s lack of confidence in the employee’s ability to perform his/her duties in the future, and publicity that could have a negative impact on the reputation of the agency.

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The Douglas Factor (Continued)

Under certain circumstances, the Board will review the agency's penalty. This review is conducted to determine whether the agency considered all the relevant factors and exercised its discretion within tolerable limits of reasonableness. In determining that the penalty of removal was appropriate for Curtis Douglas' misconduct, the Board considered several of the *Douglas* factors. First and foremost the Board considered the seriousness of the offense and the fact that Mr. Douglas' misconduct had *"a direct impact on the agency's ability to accomplish its mission."* The *"seriousness of the offense was compounded"* by the fact that Mr. Douglas' "absence was intentional and was occasioned by his desire for personal gain." The Board considered Mr. Douglas' past disciplinary record which revealed that he had been *"disciplined for unauthorized absence on four previous occasions."* The Board considered the clarity with which the employee was on notice. *"This record of progressive discipline demonstrates that appellant was clearly on notice that unauthorized absence from his duty station was a serious offense."* Finally, the Board considered the adequacy and effectiveness of alternate sanctions. *"It (the prior discipline record) also demonstrates that sanctions less severe than removal have not been successful in curbing appellant's misconduct."* The Board concluded that the penalty was not unreasonable or arbitrary, and affirmed the removal action. (Quotes are from *Douglas v. V.A.*)

As supervisors and managers who are responsible for correcting employee's misconduct, you should be aware of the *Douglas* factors. But fear not, for when you are faced with making a decision on an appropriate disciplinary action or penalty, you won't be alone. Your servicing employee relations specialist will walk you through the *Douglas* factors and assist you in making a reasonable and sound decision, which will promote the efficiency of the service.



What is the MSPB?

The U.S. Merit Systems Protection Board, or the Board, is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board's mission is to ensure that Federal employees are protected against abuses by agency management; that Executive Branch agencies make employment decisions in accordance with the merit systems principles; and the Federal merit systems are kept free of prohibited personnel practices.

With some exceptions, Federal employees have the right to appeal an agency action to the Board. The Board will conduct a hearing and issue a decision. The majority of the cases brought before the Board are employee's appeals of agency adverse actions, e.g., removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less.

To learn more about the Merit Systems Protection Board, visit their website at www.mspb.gov.

THE ETHICS CORNER

The information printed below was recently released as a MEMORANDUM TO ALL EMPLOYEES. Since the fall campaigns are now in full swing, we decided that it would be timely to reprint this memorandum. Although the range of political activities that employees can participate in has expanded significantly as a result of the Hatch Act Reform Amendment, employees still need to be aware that there are some restrictions.



POLITICAL ACTIVITY UNDER THE HATCH ACT

This is an election year, and there may be employees who have questions about what type of political activity they are allowed to engage in as a Government employee. The Hatch Act Reform Amendment of 1993, permits most employees to take an active part in off duty political management and political campaigns. However, Career Senior Executive Service Employees remain under the “old” Hatch Act rules and are subject to additional restrictions.

Listed below are permitted and prohibited activities for employees who may be politically active in partisan campaigns; and additional restrictions on permitted and prohibited activities for Career Senior Executive Service Employees.

Permitted Activities for Employees who may be Politically Active in Partisan Campaigns - Employees	Prohibited Activities for Employees who may be Politically Active in Partisan Campaigns – Employees
May be candidates for public office in nonpartisan elections	May not use their official authority or influence to interfere with an election
May be candidates in Partisan Election Where Permitted by the Office of Personnel Management as an Independent	Generally, may not be candidates in Partisan Election
May register and vote as they choose	May not solicit, accept or receive political contributions unless both individuals are members of the same federal labor organization or employee organization and the one solicited is not a subordinate employee
May assist in voter registration drives	May not knowingly solicit or discourage the political activity of any person who has business before the agency
May express opinions about candidates and issues	May not engage in political activity while on duty
May contribute money to political organizations	May not engage in political activity in any government office
May attend political fundraising functions	May not engage in political activity while wearing an official uniform
May attend and be active at political rallies and meetings	May not engage in political activity while using a government vehicle
May join and be an active member of a political party or club	May not be candidates for public office in partisan elections
May sign nominating petitions	May not wear political buttons on duty
May campaign for or against candidates in partisan elections	

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Permitted Activities for Employees who may be Politically Active in Partisan Campaigns - Employees	Prohibited Activities for Employees who may be Politically Active in Partisan Campaigns – Employees
May make campaign speeches for candidates in partisan elections	
May distribute campaign literature in partisan elections	
May hold office in political clubs or parties including serving as a delegate to a convention	

ADDITIONAL RESTRICTIONS FOR Career Senior Executive Service Employees, Administrative Law Judges, and Contract Appeals Board Members

Permitted Activities for Employees Subject to Additional Restrictions – Employees	Prohibited Activities for Employees Subject to Additional Restrictions – Employees
May register and vote as they choose	May not be candidates for public office in partisan elections
May assist in voter registration drives	May not campaign for or against a candidate or slate of candidates in partisan elections
May express opinions about candidates and issues	May not make campaign speeches or engage in other campaign activities to elect partisan candidates
May participate in campaigns where none of the candidates represent a political party	May not collect contributions or sell tickets to political fund raising functions
May contribute money to political organizations or attend political fund raising functions	May not distribute campaign material in partisan elections
May attend political rallies and meetings	May not organize or manage political rallies or meetings
May join political clubs or parties	May not hold office in political clubs or parties
May sign nominating petitions	May not circulate nominating petitions
May campaign for or against referendum questions, constitutional amendments, municipal ordinances	May not work to register voters for one party only
May be candidates for public office in non partisan elections	May not wear political buttons at work

Please note that it is a crime, punishable by fine of not more than \$5,000 or imprisonment for not more than 3 years, or both, for any person to coerce or attempt to coerce an employee to engage in, or not to engage in, any political activity.

If you should have any question about the political activity rules, please contact Mary Royster, Mission Area Ethics Advisor (202) 720-9858, or by E-mail at mary.a.royster@aphis.usda.gov.

RULES, RULES, EVERYWHERE RULES

Your daughter currently works for another Federal agency. You recently learned about a job in your office that you know she would love, and would really be good at. When you tell her about it, she confirms that this is a job that she would really like. Being a good father/mother, you decide that it would not hurt to give your daughter a little help. After all, she won't be working for you. You know the deciding official for this position, and decide to pay her a little visit to put in a good word for your daughter.

Unfortunately this decision is not a wise one since advocating of behalf of a relative is a violation of a rule found in something called the *Prohibited Personnel Practices*. These practices govern many of the actions that you may be involved in as a supervisor – actions such as appointments, promotions, details, transfers, reassignments, awards, training, and others. They also govern the conduct of others, such as human resources employees, who may be involved in these kinds of actions. Here are some of the things you should not do if you have the authority to take, direct others to take, recommend or approve personnel actions.

PROHIBITED PERSONNEL PRACTICES

Adapted from S 2302(b) of 5 U.S.C.

1. *Illegally discriminate for or against any employee or applicant.*
2. *Solicit or consider improper employment recommendations.*
3. *Coerce an employee's political activity.*
4. *Obstruct a person's right to compete for employment.*
5. *Influence any person to withdraw from competition for a position.*
6. *Give unauthorized preference or improper advantage to any person.*
7. *Appoint, employ, promote, advance or advocate for a relative.*
8. *Retaliate against a whistleblower, whether an employee or applicant.*
9. *Retaliate against employees or applicants for filing an appeal, complaint or grievance..*
10. *Unlawfully discriminate based on actions not adversely affecting conduct/ performance..*
11. *Knowingly violate veterans' preference requirements.*
12. *Violate any law, rule, or regulation which implements or directly concerns the merit principles.*

For more information regarding the Prohibited Personnel Practices, contact the **U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036-4505**. The OSC can be contacted by phone at (202) 653-7188 or 1-800-872-9855 (toll free), or at www.osc.gov.

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Rules, Rules, Everywhere Rules (Continued)

Now that we have listed some things you should not do when involved in personnel actions, here are some things you should do. These are called the *Merit Systems Principles*.

MERIT SYSTEMS PRINCIPLES

Adapted from S 2301(b) of 5 U.S.C.

1. Recruit, select, and advance on merit after fair and open competition.
2. *Treat employees and applicants fairly and equitably..*
3. *Provide equal pay for equal work and reward excellent performance..*
4. *Maintain high standards of integrity, conduct, and concern for the public interest.*
5. *Manage employees efficiently and effectively..*
6. *Retain or separate employees on the basis of their experience..*
7. *Educate and train employees if it will result in better organizational or individual performance.*
8. *Protect employees from improper political influence..*
9. *Protect employees against reprisal for the lawful disclosure of information in "whistleblower" situations..*

EMPLOYEE RELATIONS THE LIGHTER SIDE

"Do you believe in life after death?" the boss asked one of his employees. "Yes, sir" the employee replied. "Well then, that makes everything just fine," the boss went on. "After you left early yesterday to go to your grandmother's funeral, she stopped by to see you."

"So tell me," asked the interviewer, "do you have any other skills you think might be worth mentioning?" "Actually yes," said the applicant modestly. "Last year I had two stories published in national magazines, and I finished my novel." "Very impressive," the interviewer commented, "but I was thinking of skills that you could apply during office hours." The applicant explained brightly, "Oh, that was during office hours."

"The brain is a wonderful organ; it starts working the moment you get up in the morning and does not stop until you get to the office." - Robert Frost

From the Federal Personnel Management Institute's newsletter "FedNews On Line"

THE PROBATIONARY PERIOD

What is the probationary period? Career-conditional employees are required to serve a one year probationary period following their appointment (excepted employees may also be required to serve a trial period, depending on the nature of their appointment). *The probationary period is the last step in the hiring process.*

Why is the probationary period important? It provides supervisors an excellent opportunity to assess an employee's conduct and performance to determine if he/she should be retained. It is the best time to deal with a problem employee, since an employee is generally more receptive to guidance during this period, and since it is easier to terminate the employee if improvement is not forthcoming. It is important to remember that small problems that develop during the probationary period can, and often do, become larger problems later.

Should I deal differently with probationary employees? Other than the fact that you will want to closely observe an employee's performance and conduct during the probationary period, you should treat probationary employees the same as non-probationary employees. Initially, of course, a new employee will likely require more of your attention than your more experienced employees. If problems develop, make certain to document and discuss them with the employee, just as you would do with a non-probationer.

What special problems should I watch out for? Most difficulties occur because supervisors fail to act quickly enough. Since probationary terminations must be completed prior to the end of the probationary period, it is important that conclusions regarding an employee's performance and conduct be reached early enough to permit termination before the probationary period ends.

What rights do probationary employees have?

Probationary employees have limited appeal rights. *If their termination is based on-the-job misconduct or unsatisfactory performance*, they are simply given a letter of termination. They may appeal this letter to the Merit Systems Protection Board, but based only on allegations of discrimination for partisan political activity or marital status. *If their termination is based on pre-employment conduct*, such as the falsification of an application for employment, they are entitled to a notice of proposed termination, a right to reply in writing, and a letter of decision. Their appeal rights are the same as those available to employees terminated for job misconduct or unsatisfactory performance. All employees, of course, have the right to file a discrimination complaint.

Do I need to issue a Performance Improvement

Letter? If the issue is unsatisfactory performance, you are not required to give probationary employees a Performance Improvement Period letter, since the probationary period is similar to the opportunity to improve. However, we always recommend that you address any performance problems or concerns with the employee so that he or she has an opportunity to improve.

NOTE: A recent Federal Circuit Court case, called *McCormick v. Department of the Air Force*, has changed how the term "employee" is defined for the purpose of determining one's probationary status. As a consequence of this case, certain employees with previous Federal service may have already served their required probationary period prior to being appointed to their current position. Your servicing employee relations specialist can determine if this case applies to your employee.

THE MANAGER'S “BILL OF RIGHTS”

An article regarding the rights of managers appeared recently in *cyberFEDS*, a service that employee relations specialists use to research case law. The article concerned a presentation that Mr. William Rudman, a former Deputy Undersecretary of Defense and Director of the Defense Technology Security Administration, made during the 2004 Excellence in Government Conference. During his presentation, Mr. Rudman cited a “Manager’s Bill of Rights” that was prepared by the Department of Justice. It says that managers have a right to:

- ✚ Be largely immune from civil liability for their actions as a Federal manager.
- ✚ Ask for and receive explanations from staff.
- ✚ Review files, including computer files.
- ✚ Meet with an employee without being tape recorded.
- ✚ Meet with an employee without his/her attorney being present.
- ✚ Search an employee’s workplace based on a reasonable suspicion that the search will turn up evidence of work-related misconduct.
- ✚ Reasonably order an employee to do anything that is not illegal or could cause the loss of life or limb. This order may be oral, written or by e-mail.
- ✚ Stop threatening, disruptive or disrespectful speech or conduct.
- ✚ Discipline an employee.
- ✚ Cancel leave.
- ✚ Control travel.
- ✚ Reassign an employee to a different location or position at the same grade and pay, even if it requires relocation.

Of course, some of these “rights” may not be quite so simple in real situations. For example, issues of fairness and equity must always be considered when taking any action affecting an employee, and employees in bargaining units often have the right to have a representative present when certain subjects, such as alleged misconduct, are discussed. This list of rights does, however, provide clear evidence that a supervisor’s hands are not tied when it comes to taking action to control the workplace.

TRAINING OPPORTUNITIES

APHIS Required Training for New Supervisors in a Probationary Status

Fundamentals of APHIS Human Resource Management (FAHRM) Blended Learning, complies with OPM and USDA requirements that **all new supervisors** in their 12-month probationary period demonstrate competency in Human Resources Management (HRM). The HRM performance requirements read: “Ensures effective recruitment, selection, training, performance appraisal, recognition, and corrective/ disciplinary action; promotes affirmative employment, good labor relations and employee well-being”. FAHRM-Blended Learning includes 36 hours of classroom instruction and between 12-15 hours of web seminars (using the telephone and the internet) to meet the above stated supervisory competency requirements.

Application and Enrollment Procedures. The last FAHRM Training Announcement for calendar year 2004 with course dates, locations, application and enrollment process, including the use of the new electronic form APHIS 601, FAHRM course application, is found at the Training and Development website address:

www.aphis.gov/mrpbs/training_employee_development.html

This last FAHRM course in November will be located in Charleston, South Carolina and additional information will be forwarded directly to those selected to attend. Stay tuned for the calendar year 2005 Training announcement.

Course Dates: November 15 – 19, 2004 (40 hour classroom instruction)

Web Seminar Dates: October 18 – 22, 2004

Application Deadline: September 10, 2004

For Additional Information Contact:

FAHRM Program Manager, 301-734-8554 or betsy.m.guardiola@aphis.usda.gov

FAHRM Program Assistant, 301-734-5551 or Tanya.briscoe@aphis.usda.gov

Previous issues of the Bulletin are available at www.aphis.usda.gov/mrpbs. Just click “Human Resources” and then “Employee Relations.” Questions, comments and ideas for future Bulletin articles can be directed to ER.Bulletin@aphis.usda.gov.

EMPLOYEE RELATIONS DIRECTORY

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